IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.63 OF 1989

Taramati Bhima Bachute ..Appellant
(Original Plaintiff)

versus

1. Sambha Tuka Bachute, since deceased
through legal heirs
1A. Subhadra Tayappa Bandgar
1B. Madhu Tayappa Bandgar
2. Gopabai Sambha Bachute
3. Mayabai Sambha Bachute
4. Machindra Vithoba Chaudhari died
by his heirs
4A. Bhama Machindra Chaudhari
4B. Bandu Machindra Chaudhari
4C. Fantu Machindra Chaudhari
4D. Pintu Machindra Chaudhari
5. Arjun Vithoba Chaudhari died
by his heirs
5A. Venubai Arjun Chaudhari
5B. Ramchandra Arjun Chaudhari
5C. Draupadibai Vithoba Chaudhari
6. Bhima Vithoba Chaudhari
..Respondents
(Original Defendants)

Mr.N.P.Shimpi, Mr.P.K.Dhakephalkar for the Appellant

Mr.Nitin Jamdar for the Respondent

Coram : S.R.Sathe, J.
Dated : 14th March, 2006

JUDGMENT.

1. Appellant, the Original Plaintiff in Regular Civil Suit No.50 of 1976 has filed this Second Appeal against the judgment and order passed by the 5th Additional District Judge, Solapur, whereby the decree passed by the trial Court directing the

Defendant No.1B to pay maintenance of Rs.600/- per year to plaintiff and past maintenance of Rs.1800/- was confirmed and plaintiff's claim for partition and separate possession of suit property was rejected. For the sake of convenience hereafter the parties shall be referred to as plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under:

. The Original Defendant No.1 Sambha Tuka Bachute is the father in law of plaintiff while the Defendant Nos.2 and 3 are the wives of the deceased, the original defendant No.1. It is plaintiff's case that her husband Bhima and his father i.e. defendant No.1 were having joint family. The properties described in the plaint para 1 are the ancestral properties of defendant No.1 and his son Bhima. Plaintiff's husband Bhima was absconding from the year 1949-50. He died in 1952 at Tuljapur. As Plaintiff being the widow in the joint family, according to her she was entitled to get 1/3rd share in the suit property. After the death of Bhima the Defendant No.1 harassed Plaintiff and drove her out

of the house. Sometime, in the year 1975-1976 or thereabout the plaintiff came to know that the Defendant is disposing off the joint family property. She, therefore, issued a public notice. Inspite of the said notice the Defendant No.1 was not ready and willing to give partition and separate possession of suit property to plaintiff. Hence, she filed suit for partition and separate possession of her 1/3rd share in the suit property. Alternatively she also claimed maintenance at the rate of Rs.1200/- per year and Rs.3600/- by way of past maintenance.

3. The Original Defendant No.l filed written statement Exhibit 19 and denied the plaintiff's claim. According to him the land admeasuring 2 Acres 20 Gunthas out of Gut No.28 was only the ancestral Land while the other suit lands were purchased by him out of his own income. He, therefore, contended that the Plaintiff has absolutely no right in respect of remaining suit properties. The defendant No.1 further contended that the marriage of Bhima and plaintiff had taken place sometime in the year 1934 and at that time Bhima was about 14-15 years of age, while plaintiff

was of 7 to 8 years age. Bhima died within one year after marriage. As the marriage of plaintiff had taken place at her early age she had infact not come to the house of defendant and plaintiff and Bhima had never stayed together. The Defendant No.1 further contended that as Bhima died in the year 1935 or thereabout, the plaintiff is not entitled to get any share in the joint family property. He also denied plaintiff's claim regarding maintenance and prayed for dismissal of the suit.

4. The defendant nos.2 and 3 filed pursis exhibit 29 and adopted the written statement of defendant No.1.

5. During the pendency of the suit the original defendant No.1 died and his heirs namely defendant 1A and 1B were brought on record.

6. On the pleadings of the parties the trial court framed issues at Exhibit 51. After considering the evidence adduced by both the parties, the trial court came to the conclusion that the suit properties described in para 1A and 1C are ancestral properties and there was joint family of

defendant no.1 and his son. The Trial Court, however, held that plaintiff has failed to prove that her husband Bhima died in the year 1952. On the contrary, he held that Bhima died prior to coming into operation of Hindu Women's Right to Property Act, 1937. He, therefore, held that the plaintiff is not entitled to get any share in the suit property and she is only entitled for maintenance at the rate of Rs.600/- per year. He, therefore, decreed the suit accordingly.

7. The above mentioned order was challenged by the plaintiff in the Civil Appeal No.314 of 1982. The Appellate Court also held that the Plaintiff has failed to prove that her husband Bhima died in the year 1952 and that she is entitled for any share in the suit property. He, therefore, dismissed the appeal.

8. Being aggrieved by the above mentioned order the original Plaintiff has filed the present Second Appeal. From the perusal of the record it appears that at the time of admission of the appeal this Court (Coram: S.N.Dawood, J.) has passed the following order:

> "Second Appeal is admitted. The substantial question of law being the correctness of the trial and 1st appeal Courts findings vis-avis Appellant’s right to the property or in the alternative the quantum of maintenance to which she is entitled."

9. In this appeal before me, the learned Advocate for the Plaintiff has urged only three points, firstly he submitted that both the courts below have not properly appreciated the evidence on record and have wrongly held that plaintiff has failed to prove that her husband Bhima died in the year 1952. Secondly, he canvassed before me that both the Courts ought to have held that Bhima died in the year 1952 and plaintiff is entitled to have 1/3rd share in the suit properties by virtue of the provisions of Hindu Womens Right to Property Act, 1937. Lastly, he argued before me that the maintenance granted by the courts below is very meagre and the courts ought to have awarded maintenance of Rs.1200/- per year. He, therefore, submitted that the appeal be allowed and the suit be decreed in plaintiff’s favour as prayed. As against

this Shri Nitin Jamdar learned Advocate for the defendant supported the judgment and order passed by the courts below.

10. The relationship between the parties is not in dispute. Both the courts below have also held that the suit properties 1A and 1C were joint family properties of Defendant No.1A and his son Bhima i.e. husband of plaintiff. The main and material question is when Bhima died. Whether he died in the year 1952 as alleged by the plaintiff or whether he died sometime in 1937 or thereabout as contended by the defendants. It is needless to say that when plaintiff had come to court with specific allegation that her husband Bhime died in the year 1952 the burden was on her to prove the same. While considering this aspect it is worth to note that initially the plaintiff had not even mentioned the year in which Bhima died. It is only when the defendant took specific contention in this behalf that plaintiff amended the plaint and alleged that Bhima died in the year 1952 at Tuljapur. When such was the position it was in fact very easy for the plaintiff to adduce cogent and convincing evidence by producing the death extract of Bhima. However,

admittedly no such extract or any other document is produced by the plaintiff. It is true that even the defendants have also not produced any documentary evidence in this behalf. Naturally court has to decide the said issue on the basis of the oral evidence adduced by both the parties with regard to death of Bhima.

11. In order to prove her case, plaintiff examined herself and one witness by name Narsu Bachute. He is the uncle of Original Defendant No.1. From the perusal of plaintiff's evidence it is very clear that her husband had infact left the house after marriage and he was absconding. The plaintiff has absolutely no personal knowledge about the death of Bhima. She has only stated that somebody from Tuljapur told her that Bhima died. She has not even named the person who gave her this information, leave aside the question of examining the said person as a witness. She has infact not adduced an iota of evidence to show that Bhima has infact died. She has clearly stated that she is not aware as to when Bhima died and where he died. When such is the position her case that Bhima died in the year 1952 cannot be accepted and the same has been

rightly rejected by both the courts below.

12. An attempt was made on behalf of the plaintiff to show that as per the statement of her witness, Bhima died in the year 1952 i.e. after the Razakat Movement. However, if we carefully scrutinize the evidence of plaintiff as well as this witness namely Narsu Bachute it appears that their testimony infact supports the contention of defendants that Bhima died sometime in the year 1936. Plaintiff while giving deposition on 16.7.1981, has stated in her cross examination that her husband died about 45 years back, means he died sometime in the year 1936. Similarly, plaintiffs witness Narsu Bachute who is infact Uncle of Original Defendant No.1 while giving evidence on 23.7.1981 has stated that plaintiffs marriage took place about 50 years back. It means it took place sometime in the year 1931. He has also stated that Bhima died two years thereafter, means he died sometime in the year 1933 or thereabout. He has further stated that he has no knowledge as to at what place Bhima died. So, by no stretch of imagination it can be said that the evidence of Plaintiff and her witness is sufficient to prove

plaintiffs case that Bhima died in the year 1952. On the contrary, their evidence supports the contention of the defendant and from their evidence as well as from the evidence of Defendants it does appear that Bhima died sometime in 1935 or thereabout, means in any case prior to coming into force the Hindu Women's Right to Property Act, 1937.

13. There is no dispute that the plaintiff would get share in the suit property only if it is proved that she is the widow after coming into operation of the Hindu Womens Right to Property Act. The learned Advocate for the Appellant has placed reliance on the case Kutti Laxmi Parumally V/s. Potti Krishnavernamma AIR 1965 SC 825 wherein it is held by the Apex Court that the quantum or interest to which the Hindu widow is entitled under Section 3(2) of the Hindu Women's Right to Property Act, 1937 is to be determined as on the date on which she seeks to enforce partition under sub section (3) of Section 3. However, once we come to the conclusion that there is nothing on record to show that the plaintiff is widow, after the coming into operation of the Hindu Women's Right to Property Act and on the contrary it appears that her husband died

sometime in the year 1935 then the question of application of this ruling, does not arise. Section 4 of the Hindu Women's Right to Property Act clearly shows that nothing in this act shall apply to the property of any Hindu died intestate before the commencing of this Act. So, I have absolutely no hesitation to hold that both the courts below have rightly held that the plaintiff is not entitled to get any share in the suit property.

14. Coming to the question of maintenance it must be noted that the plaintiff has not at all adduced any cogent evidence. She has nowhere stated as to what are her needs or requirements and why amount of Rs.1200/- per year is required for maintenance. So, merely because today the amount of Rs.600/- per year appears to be very meagre, we can't jump to the conclusion that the trial court ought to have granted maintenance of Rs.1,200/- per year. So, under such circumstances the first Appellate Court did not feel it necessary to interfere with the order of maintenance. I am, therefore, not inclined to interfere with the said finding.

. In view of the above, it is very clear that both the courts below have rightly considered the entire evidence and correctly held that plaintiff is not entitled for any share in the suit property. There is no need to interfere with the findings recorded by the Courts below. Thus, there is no substance in this appeal. Appeal is dismissed.

(S.R.Sathe, J.)

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